

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

SHARON M. GUTHRIE,)	
)	
Plaintiff,)	
)	
v.)	No. 1:22-CV-162-DCLC-SKL
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**MOTION IN LIMINE NO. 2 – PRECLUDE TESTIMONY OR EVIDENCE ON
CERTAIN DAMAGES CLAIMS**

The United States of America, by and through Francis M. Hamilton III, United States Attorney for the Eastern District of Tennessee, hereby moves *in limine* to preclude testimony or evidence on damages claims for lost wages or loss of earning capacity, in support of which would show as follows:

A. Lost Wages/Loss of Earning Capacity

“Damages such as lost wages ... have a monetary value that is readily ascertainable. It is therefore reasonable to require that plaintiffs prove the monetary value of such damages with relative precision.” *Health Cost Controls, Inc. v. Gifford*, 239 S.W.2d 728, 733 (Tenn. 2007).

Under Tennessee substantive law, to show a loss of earning capacity as an element of damages, a plaintiff must prove: (1) the existence of some earning capacity prior to the injury, (2) proof that this earning capacity has been lost or diminished, (3) proof that the lost or diminished earning capacity is proximately caused by the injury, and (4) proof of the dollar amount of the loss. *Oglesby v. Riggins*, 2011 WL 915583, at *6 (Tenn. Ct. App. Mar. 27, 2011) (citing 29 Am.Jur.3d *Proof of Lost Earning Capacity* § 6 (1995)).

To be clear, Plaintiff has not pled lost wages or loss of earning capacity as a claimed

element of damage in either the Complaint (Doc. 1) or the Amended Complaint (Doc. 41). In Plaintiff's Initial Disclosures, however, both past lost wages and future lost wages/loss of earning capacity were listed as categories of damages pursuant to FED. R. CIV. P. 26(a)(1)(A)(iii), but for each item Plaintiff simply stated "not yet determined." (*See* Plaintiff's Rule 26(a)(1) Initial Disclosures, attached hereto as **Exhibit 1**). Defendant submitted Interrogatories to Plaintiff on January 27, 2023, and Plaintiff responded to those Interrogatories on June 28, 2023. In response to Interrogatory No. 11, which requested a computation of each category of damages, including lost wages and loss of earning capacity, Plaintiff responded "I have not calculated my lost income and loss of earning capacity." (*See* Plaintiff's Responses to Defendant's Interrogatories, attached hereto as **Exhibit 2**, at p. 7). This interrogatory response was not supplemented.

Plaintiff then submitted a First Supplement to Plaintiff's Initial Disclosures on November 2, 2023, and a Second Supplement to Plaintiff's Initial Disclosures on March 10, 2024. In both of those documents, Plaintiff no longer listed lost wages or loss of earning capacity as categories of damages claimed in this case pursuant to FED. R. CIV. P. 26(a)(1)(A)(iii).

To the extent Plaintiff is actually claiming lost wages and/or loss of earning capacity as damages claims in this case, even though it is not pled, Plaintiff should be precluded from presenting any testimony or evidence on these claims pursuant to FED. R. CIV. P. 37(c). Plaintiff was required to provide information supporting these claims in initial disclosures pursuant to FED. R. CIV. P. 26(a)(1), and failed to do so initially or in two subsequent supplements. Plaintiff was separately asked to provide this information in written discovery and failed to provide it. Pursuant to FED. R. CIV. P. 37(c)(1), this Court should determine that Plaintiff is not allowed to supply evidence of either of these damages claims at trial.

WHEREFORE, Defendant requests that this Court preclude Plaintiff from presenting any testimony or evidence on lost wages or loss of earning capacity during the trial in this matter.

Respectfully Submitted,

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